was held, that the prisoner could not prove that the prosecutor had frequently offered to leave Court, and not appear as a prosecutor, if the prisoner would settle the subject matter of the indictment with him, was so decided, on the ground, that if it was true, yet it would not, in the slightest degree, influence the Jury, or impeach the testimony of the witness. On that ground, the case was properly disposed of, on principle; but I exceedingly doubt the correctness of the assumption, that it could not legitimately affect the testimony of the witness. It might be quite material, on the question of the prosecutor's motive in prosecuting, and whether he had not adopted that mode of attack, in order to procure money.

But, in the present case, the offer was, to prove that Miller, the principal witness for the plaintiff, had attempted to suborn another person to swear falsely in the cause; and it seems to me, no stronger evidence could possibly be adduced, to show the motives and feelings of the man, then this evidence, and I am of opinion a new trial should be granted, with costs to abide the event.

New trial granted.

Supreme Court of Pennsylvania, October, 1852.

IN RE NATHAN RAMSEY'S ESTATE.

1. Where R., who died in 1837, had executed a will in 1819, wherein he devised one-half his real estate "to his legal and natural *heirs* and their heirs forever, to be divided among them in equal shares, to be share and share alike." *Held*, that only those who would have been *heirs* under the act of 1833, came within the description, and therefore, that children of deceased nephews and nieces did not take.

2. Under a devise to "heirs," the estate vests in those who answer that description at the time of the death of the testator. Where a term of known legal signification is used, the Courts will consider that the testator used that term in that recognized sense, and will so construe the will.

Error from Orphans' Court of Cumberland County.

The facts are stated in the opinion of the Court.

LEWIS, J.—The will of Nathan Ramsey was executed on the 8th of October, 1819, and the testator died in 1837. He devised the half part of his real estate "to his legal and natural heirs and their heirs forever, to be divided among them in equal shares, to be share and share alike." If the testator had died in 1819, at the time of making his will, the children of his nephews and nieces would have answered the description of "heirs," under the law then existing. But at the time of his death, in 1837, they did not answer that description, inasmuch as the act of 1833 abolishes the right of representation among collaterals, after brothers' and sisters' children. And the question in this case, is whether the decedent intended to give his estate to those who would answer the description of "*heirs*," according to the law existing *at the time of making the will*, or to those who were recognized as heirs by the law in existence *at the time of his death.*

It cannot be pretended that the estate was given to those who would have been his heirs had he died at the time of making the will. Such a construction would defeat the children of Richard Wood altogether. He was living at the date of the will, but died before the testator, and the latter died before the enactment of the statute of 1844, which, under other circumstances, might have saved a devise to Richard Wood from becoming void by his death before it vested.[1] And the effect of this construction would be to give to each of the nephews, and the children of nephews, a share equal to the share of the testators own brothers and sisters. This could scarcely be supposed to accord with his intention, for the latter were nearer in degree to the testator, and may fairly be presumed to have been the preferred objects of his bounty. In the case of a testator who was married, a still more startling effect might be produced by such a construction. Children might be born afterwards; but these would be entirely excluded, because they were not in existence to answer the description of "*heirs*" at the time required by this construction; and the whole estate would thus go to collaterals in remote degrees, who happened to answer the description of "heirs" at the time of making the will.

[1] But see Martindale *v.* Warner, 3 Harris, 471.

This construction is, therefore, entirely inadmissible. It is clear, that the testator looked to the *time of his death*, as the period *when the estates were to vest.* But the main question still remains: What individuals were intended to take them? Those who filled the description of "*heirs*" according to the law existing *at the date of the will*, or those who answered that description under the law existing at the *death of the testator?* The intention must control.

There can be no "heirs" in the life of the ancestor, and the use of this term is a strong indication that he had no particular persons in view as the favorite objects of his bounty, and that he looked to the period of his death as the time for ascertaining the persons who were to take under that description. When he made use of a term of known legal signification, and one which cannot, according to the rules of law, apply to any persons but those who answer that description at his death, we are bound to believe that he used the term in its legal sense, unless there is something in the will to indicate a contrary intention. Smith's Executory Int. sec. 211, part 2, ch. 2. We have no right to interpolate a word for the purpose of reading his will as a devise to the *presumptive heirs*, and thus deprive the "legal heirs" of the estate expressly devised to them. In *Baskin's Appeal*, 3 Barr, 307, it was decided that the statute of distribution is to be resorted to, in the case of a bequest to "all the heirs," for the purpose of ascertaining "who are to take, and the quantum of the estate." In Powell on Devises, 282, n., the rule is stated, that "where a devise or bequest is simply to a testator's 'next of kin,' it vests in those who sustain the character *at his death.*" And the same rule prevails even where the devise is to a person for life, or for any other limited interest, and afterwards to *the next of kin.* Powell on Devises, 284, n., 1 Cox, 131; 3 B. C. C. 234, 4 ib. 207; 3 East. 278; 3 Mer. 689. Where words of general description are used, they must be considered as referring to *the death of the testator*, "unless by the context, or by express words, they plainly appear to be intended otherwise." Powell on Devises, 286, n.; Smith's Ex. Int., s. 214, pt. 2, ch. 2. In the will beforo us, there is nothing to take the case out of the general rule of construction. And it is important to the peace of society, and to the

stability of titles, that we should not, for light causes, depart from the general rule of construction, which, under a bequest or devise to "*heirs*," gives the estate to those who answer that description at the death of the testator.

It is ordered and decreed, that the decree of the Court below, ordering the decree of the 12th February, 1850, to be so amended "that the complainants (below) receive from the executor of the testator the sum of $74,00\frac{3}{4}$, with interest from the 12th February, 1850," be reversed.

And it is further ordered and decreed, that the decree of the 12th February, 1850, be affirmed.

Supreme Court, Pennsylvania, September, 1852.

THE NEW YORK AND ERIE RAILWAY, *v.* SKINNER.

1. An action on the case for negligently conducting a Railway train may be maintained; as to what constitutes negligence, *quaere.*
2. A Railway Company is a purchaser for valuable consideration of the exclusive use of the land, over which the track is laid, as an incorporeal hereditament, and may use thereon the greatest allowable rate of speed, without interference from strangers.
3. By the common law of Pennsylvania, as well as by the common law of England, the owner of cattle is bound to keep them within his own custody at his peril, though he may let them go at large without incurring liability from entry on unenclosed woodland or waste field, and this because of the peculiar circumstances of the people here.
4. A judge's charge to a jury must be accurate, not only in its outline, but also in its detail, or this court will reverse on error.
5. The principle in Simpson *v.* Hand, 6 Whart. 311, affirmed and enforced.
6. A Railway Company is responsible only for negligence or wanton injury, and the owner of cattle killed or injured on their track, can have no recourse to the Company or its servants;—and such owner is liable for damages done by his cattle to the Company or its passengers.

Error to the Court of Common Pleas, of Susquehanna County.

The plaintiff below declared against the defendant, in trespass on the case, alleging that in consequence of the negligence of the de-